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Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5526
Date Complaint Filed: August 30, 2004
Date of Notification: September 8, 2004
Last Response Received: October 4, 2004
Date Activated: July 6, 2005

Expiration of Statute
of Limitations: August 30, 2009

COMPLAINANT:

Toni Hellon

RESPONDENTS:

Graf for Congress and Thomas Linn in his
official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 441d
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

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First General Counsel's Report

I. INTRODUCTION

These matters both involve issues relating to disclaimers in printed communications. Pursuant to new disclaimer requirements set forth in the Bipartisan Campaign Reform Act of 2002 ("BCRA"), adding section 441d(c) to the Federal Election Campaign Act of 1971, as amended ("the Act"), the Commission adopted concomitant disclaimer regulations effective January 13, 2003, which set forth new requirements for disclaimers involving printed communications. The new requirements are that the disclaimer must be of sufficient type size to be clearly readable by the recipient of the communication, contained in a printed box set apart from the other contents of the communication, and printed with a reasonable degree of color contrast between the background and the printed statement. *See* 11 C.F.R. § 110.11(c)(2)(i)-(iii). These matters are the first to be considered by the Commission concerning these disclaimer requirements since the new rules have been in effect. Therefore, although they are otherwise unrelated, this Office is discussing both of these matters in the same First General Counsel's Report.

II. MUR 5526 (GRAF FOR CONGRESS)

The complaint alleges that Graf for Congress, the authorized political committee for Randy Graf's 2004 Congressional race in Arizona ("Graf Committee"), violated the disclaimer provisions of the Act in four separate communications. According to the complaint, the Graf Committee failed to place disclaimers within a printed box in both a mailer, which is attached,

26044151270

First General Counsel's Report

1 and on the Graf Committee's website. Attachment 1. Additionally, the complaint alleges that
2 the Graf Committee distributed a vote-by-mail request form with a disclaimer that not only was
3 not within a printed box, but also was printed in a "miniscule" type size. *Id.* Finally, the
4 complaint alleges that the Graf Committee distributed campaign signs that failed to include any
5 disclaimer at all.

6 The Graf Committee did not deny that it violated the Act as alleged in the complaint. It
7 stated that it had no intention of violating any Commission rules or regulations, that Graf was
8 unsuccessful in the election, that the alleged violations seem minor, and that they caused no harm
9 to the opponent's campaign.

10 Both the mailer and the vote-by-mail forms appear to have been printed public
11 communications financed by a political committee, and subject to the disclaimer requirements in
12 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c). The Commission's regulations define "public
13 communication" as, among other things, a "mass mailing," which means a mailing by United
14 States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially
15 similar nature within any 30-day period. 11 C.F.R. §§ 100.26 and 100.27. From all appearances,
16 each of these two communications appears to have been mailed in bulk, postage pre-paid, with
17 each communication presumably mailed at approximately the same time as all the others of the
18 same communication, identical but for the recipient's name and address. *See* 11 C.F.R. § 100.27.
19 Although there is no available information to establish whether the Committee's mailing
20 included more than 500 pieces, the Committee appears to concede in its response to the
21 complaint that the mailings in question were subject to the disclaimer requirements for printed
22 communications.

26044151271

First General Counsel's Report

1 In the mailer, the Committee affixed a properly worded disclaimer ("Paid for by Graf for
2 Congress") in the return address location. The disclaimer was in a sufficient type size to be
3 clearly readable and printed with a reasonable degree of color contrast between the disclaimer
4 and its background. *See* 2 U.S.C. § 441d(a) and (c)(2) and 11 C.F.R. § 110.11(b)(1) and (c)(2)(i)
5 and (iii). However, the disclaimer was not contained in "a printed box set apart from the
6 other contents of the communication," in violation of 2 U.S.C. § 441d(c)(2) and 11 C.F.R.
7 § 110.11(c)(2)(ii).

8 Likewise, the vote-by-mail request form's properly worded disclaimer, which appears on
9 the first page of a foldable document, was not contained in a printed box. *See id.* Although the
10 contrast is sufficient, the type size used for the disclaimer, as alleged by the complaint, is quite
11 small, raising the issue of whether it meets the statute's and regulation's "clearly readable by the
12 recipient" standard. *See* 2 U.S.C. § 441d(c)(1) and 11 C.F.R. § 110.11(c)(2)(i). The regulation
13 provides some guidance by specifying that a twelve-point type size satisfies the size requirement
14 when it is used for printed materials that measure no more than 24 inches by 36 inches. *See*
15 11 C.F.R. § 110.11(c)(2)(i). The Explanation and Justification for this provision, however,
16 makes clear that the twelve-point type size for such materials provides a "safe harbor," not a
17 specific requirement. *See* 67 Fed. Reg. 76962, 76965 (2002). The vote-by-mail form, which
18 when mailed is apparently folded twice, is 10 inches by 12 inches when completely unfolded.
19 Since it is smaller than 24 inches by 36 inches when completely unfolded, and smaller still when
20 folded, with the disclaimer on the front fold, a type size smaller than 12-point would appear
21 to be sufficient so long as it is "clearly readable to the recipient." The type size of this
22 communication, while small, is "clearly readable."

26044151272

First General Counsel's Report

1 The Commission's regulation at 11 C.F.R. § 110.11 requires that "Internet websites of
2 political committees available to the general public" that meet any of the criteria in subsections
3 (a)(1)-(4) must include disclaimers. Subsection (b) of section 110.11 sets forth the general
4 content standards for the disclaimers required by subsection (a). According to the copy of a
5 website page and a separate disclaimer page provided by the complainant, the Graf Committee
6 website apparently contained the following disclaimer: "Paid for and authorized by Randy Graf
7 Campaign." <http://www.graf2004.com/> (no longer available). Since the Committee presumably
8 paid for the website and it contained express advocacy and a hyperlink entitled "contribute," the
9 website was required to "clearly state that the communication has been paid for by the authorized
10 political committee," and be "clear and conspicuous." *See* 11 C.F.R. § 110.11(a)(1)-(3), (b)(1),
11 and (c)(2). *See also* 2 U.S.C. § 441d(a)(1). Although the wording of the disclaimer does not
12 contain the precise name of the authorized committee, it appears to sufficiently meet the intent of
13 the statute and regulations. The complaint, however, alleges that the website disclaimer is
14 deficient because it is not in a printed box.

15 We agree. The specific requirements for printed communications in subsection (c)(2)—
16 which apply to "printed public communications"—apply to websites of political committees
17 available to the general public. Subsection (a) of the regulation brings such websites within the
18 disclaimer requirement, and subsections (b) (setting forth the required content) and (c)(1)
19 (requiring that all disclaimers be "clear and conspicuous") apply to all the "public
20 communications" covered by subsection (a). Subsection (c)(2) applies to disclaimers required by
21 paragraph (a) that appear on any "printed public communications." Because political committee
22 websites are included in the definition of "public communications" for purposes of section
23 110.11(a) and the information on websites is printed and can easily be printed out and

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First General Counsel's Report

1 disseminated electronically, manually or by mail, it appears such websites should be subject to
2 the specific requirements for printed communications. Thus, because the disclaimer on the Graf
3 Committee's website was not contained within a printed box, the Graf Committee violated
4 2 U.S.C. § 441d(c)(2) and 11 C.F.R. § 110.11(c)(2)(i).

5 Finally, the complaint alleges that the Graf Committee distributed campaign signs that do
6 not contain a disclaimer at all. A picture of one of the signs, attached to the complaint, shows
7 that it contains the words "Randy Graf U.S. Congress" and the Committee's website address.
8 Accordingly, the signs fall within the scope of section 110.11(a), and should have included
9 disclaimers.¹

10 Based on the foregoing, the Office of General Counsel recommends that the Commission
11 find that there is reason to believe that Graf for Congress and Thomas Linn, in his official
12 capacity as treasurer, violated 2 U.S. C § 441d(c)(2) by disbursing funds for a mailer, vote-by-
13 mail request form and the Committee's website containing disclaimers that were not placed in a
14 printed box set apart from the other contents of the communication and 2 U.S.C. § 441d (a)(1) by
15 failing to place disclaimers on campaign signs.

16 II.

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¹ Campaign signs are not specifically mentioned in the definition of public communications at 11 C F R §§ 100.26 or 110.11 (a), but appear to be included in "any other form of general public political advertising" referenced in section 100.26. This conclusion is reinforced by the Commission's specific reference to "signs" in a listing of printed public communications in section 110.11(c)(2)(i).

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First General Counsel's Report

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First General Counsel's Report

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7 **III. PROPOSED CONCILIATION AGREEMENT**

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First General Counsel's Report

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First General Counsel's Report

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7 **IV. RECOMMENDATIONS**

1. Find reason to believe in MUR 5526 that Graf for Congress and Thomas Linn, in his official capacity as treasurer, violated 2 U.S.C. § 441d(c)(2) by failing to place disclaimers in a printed box set apart from the contents of the communication on a mailer, a vote-by-mail request form and on their website.
2. Find reason to believe in MUR 5526 that Graf for Congress and Thomas Linn, in his official capacity as treasurer, violated 2 U.S.C. § 441d(a)(1) by failing to place a disclaimer on campaign signs.
- 3.
4. Approve the attached Factual and Legal Analysis in MUR 5526.
- 5.
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- 7.
- 8.
- 9.
10. Approve the appropriate letter in MUR 5526.

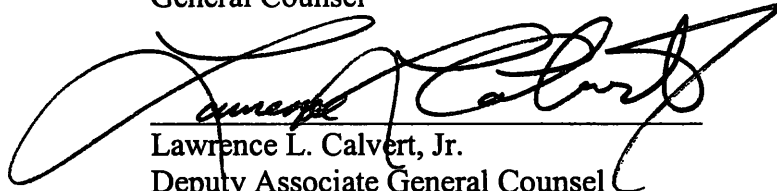
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First General Counsel's Report

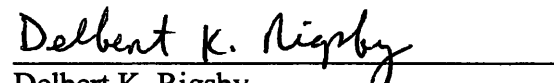
11.

12/18/05
Date

Lawrence H. Norton
General Counsel


Lawrence L. Calvert, Jr.
Deputy Associate General Counsel
for Enforcement


Susan L. Lebeaux
Assistant General Counsel


Delbert K. Rigsby
Attorney

Attachments:

1. Graf Committee Mailer and Vote-By-Mail Request Form
- 2.
- 3.
4. Factual and Legal Analysis in MUR 5526
- 5.

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Dear Friend,

Jim Kolbe has abandoned the Republican Party. In choosing to side with liberal special interests on many issues, the Congressman has made it clear he no longer shares our Republican values. If Kolbe wants to give amnesty to illegal aliens, destroy the definition of marriage, and otherwise turn away from our mainstream Republican principles, Republican voters deserve another choice.

I am running against Jim Kolbe because Southern Arizona Republicans are entitled to better representation. We need a Congressman who will work to strengthen our borders and crack down on illegal immigration, not someone who has sponsored legislation to grant amnesty to illegal aliens. We need a Congressman who will stand with President Bush to protect traditional marriage, not someone who stands proudly with those who want to dismantle the institution of marriage to satisfy their own extreme agenda. We need a Congressman who will fight for taxpayers, not waste your tax dollars on pork barrel spending.

As a State Representative, I have been a strong believer and supporter of the core Republican principles of lower taxes, free enterprise, and traditional family values. I have also led the effort in the Arizona Legislature to protect Arizona taxpayers from the negative effects and real costs that illegal immigration brings to our state. If you vote to send me to the U.S. Congress, I will continue to fight for these important issues in Washington, while never forgetting that I am representing the values of the good people of Southern Arizona.

I humbly ask you for your support in this important campaign to restore Republican values to our seat in Congress. Please join me in saying "no" to Congressman Kolbe's liberal agenda, and together we will restore commonsense Republican leadership to Congress.

Randy

Paid for by Graf for Congress
287 West El Nopal
Green Valley, AZ 85614
Tom Linn, Treasurer

GRAF FOR CONGRESS HQ

296-1323

**6810 E. Broadway Blvd.
Tucson, AZ 85710**

ATTACHMENT
Page 1 of 4

Marriage

Standing Up
For Taxpayers

Protecting
Our Borders

GRAF

Securing our Borders

Southern Arizona is facing a serious problem with illegal immigration. Our crime rates are soaring and our taxpayers are losing their doors. Meanwhile, beautiful deserts are being destroyed by illegal aliens. Simply throwing up our hands and offering amnesty to those who choose to enter our country illegally is the wrong solution. We must first vigorously enforce existing laws, and then devote necessary resources to this serious problem.

Defending the Sanctity of Marriage

Marriage is a union between one man and one woman. This has been a fundamental truth of human society for thousands of years. I believe we must oppose attempts by activist courts and the radical fringe in our society to redefine marriage in other terms. In Congress, I will stand with the President in support of a Constitutional Amendment to preserve and protect traditional marriage.

Standing up for Taxpayers

When taxes are the single largest annual expenditure for most families, something is wrong. Stated plainly, Americans are taxed too much. As your Congressman, I will make reducing your tax burden a top priority. I will also work to balance our federal budget by reducing needless "pork barrel" spending. This egregious waste of tax dollars costs American taxpayers billions each year.

Protecting Innocent Human Life

I believe that our laws must protect innocent human life. In Congress, I will work to restore legal protection to unborn Americans. I will also defend the unborn by opposing any attempt to legalize euthanasia. Whether born or unborn, young or old, healthy or infirm, life is a precious gift from our Creator that we must protect and defend.

ATTACHMENT

Page 2 of 4

Read more at: www.graf2004.com

Jim Kolbe believes that illegal aliens should be allowed to remain in our country simply by paying a fine and registering. Under Kolbe's plan, these lawbreakers could become eligible for permanent residence in the United States, essentially rewarding them for their criminal efforts.

Source: HR. 2899 (2003)

Jim Kolbe supports redefining marriage to allow same-sex couples to wed. He is not supporting President Bush's call for a Constitutional Amendment that would define marriage, once and for all. Instead, Kolbe has teamed with Massachusetts liberal Barney Frank and signed a letter calling on every member of the House of Representatives to oppose the Constitutional Amendment.

Source: Kolbe Statement 2/24/2004

While in Congress, Jim Kolbe voted to spend billions of tax dollars on wasteful pork barrel projects. Kolbe claims to be a fiscal conservative, but he has made a career of squandering your tax dollars. For instance, he supported the National Peanut Festival, the Rock and Roll Hall of Fame, and even the International Fertilizer Development Center. In 2003, when our country was facing a budget deficit of over \$300 billion, Kolbe supported an additional \$3.2 billion for even more irresponsible and wasteful spending.

Source: Citizens Against Government Waste
Pig Book 2003. HJR 2, Roll Call Vote 32, 02/13/03

Jim Kolbe has consistently aligned himself with the far-left fringe of the Democrat Party when it comes to issues of human life. In 2003, Kolbe was one of only 5 Republicans in the House of Representatives to vote against legislation banning the cruel and barbaric procedure known as partial birth abortion. Kolbe even refused to punish men who assault pregnant women with the intent of harming or killing their unborn child when he voted against the Unborn Victims of Violence Act, also known as "Laci and Connor's Law".

Source: H.R. 760, Roll Call Vote 242, 06/04/03;

H.R. 1997, Roll Call Vote 31, 02/26/04

HR 543, Roll Call Vote 39, 02/27/03

Republican Primary
Vote-By-Mail Center
6810 East Broadway, #102
Tucson, AZ 85710

DO NOT DISCARD!

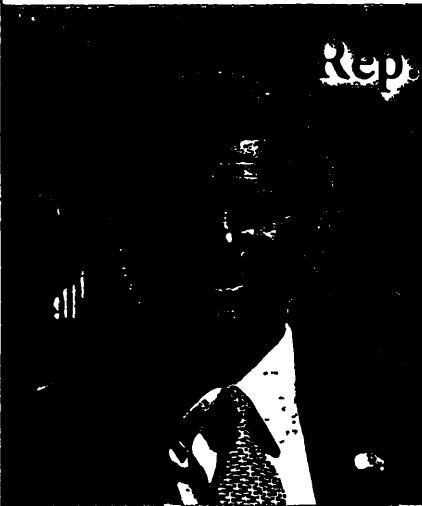
Paid for by Graf for Congress

PSRT STD.
U.S. POSTAGE PAID
PHOENIX, AZ
PERMIT #1353

ATTENTION

Important Election Documents Enclosed
Do not forward unless the addressee has filed an
authorizing change-of-address notice.





Rep. Randy Graf

**The Only Republican Candidate
for Congress who...**

**Opposes Amnesty for Illegal Aliens
Opposes Same-Sex Marriage
Opposes Wasteful Government Spending**

Republican Primary
September 7, 2004

Republican Primary
September 7, 2004

Voter Name _____

Address _____ City _____ State _____ Zip _____

☐ Check box if the address above is temporary. Unless box is marked, your voter registration record will be changed to the address given above.

Mailing address for ballot if different from above _____

Telephone (602) 613-2533

Date of Birth
(Required by Law)

Voter Signature

Voter Name _____

Address _____ City _____ State _____ Zip _____

☐ Check box if the address above is temporary. Unless box is marked, your voter registration record will be changed to the address given above.

Mailing address for ballot if different from above _____

Telephone _____

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Randy Graf

Standing Up For Arizona, Standing Up For You!

Use this card to fill out and drop in the mail. With your support, we will take our commonsense conservative message of secure borders, lower taxes, and traditional family values to Washington, where I will stand up and fight for the values we share.

I left my seat in the Arizona House of Representatives and entered this race because it is clear that our Congressman has abandoned the Republican Party. Instead of standing up for Republican principles, Jim Kolbe has joined with the Democrats to support a dangerously liberal agenda that includes amnesty for illegal aliens and redefining marriage to allow same-sex couples to wed.

Jim Kolbe's extreme positions on these important issues paint a clear picture of how out of touch he has become with Southern Arizona voters. As your next Congressman, I will fight to defend marriage, secure our borders, and eliminate the wasteful spending that Jim Kolbe advocates.

Now I need your support. Most importantly I need your vote. So please fill out the attached card and return it. You will receive a ballot in the mail in August that will let you vote from the comfort of your own home. This civic duty sounds simple enough, but far too many people forget to vote. If you care about these issues then please join me in taking a stand.

Thank you for your time and for your support.

Randy

Randy Graf vs. Jim Kolbe

and Representative for Arizona

Illegal Immigration

Kolbe	
Believes we must secure our borders and crack down on illegal immigration	Wants to give amnesty to nearly all illegal aliens

Same-Sex Marriage

Kolbe	
Believes marriage should remain between one man and one woman	Supports same-sex marriage

Taxes and Spending

Kolbe	
Received an "A" rating from Arizona's leading taxpayer group for his strong record of fighting for taxpayers	Has one of the worst lifetime ratings of any Arizona Republican member of Congress from the National Taxpayers Union

PLACE
POSTAGE
HERE

PLACE
POSTAGE
HERE

Republican Primary
Vote-By-Mail Center
6810 East Broadway, #102
Tucson, AZ 85710

Republican Primary
Vote-By-Mail Center
6810 East Broadway, #102
Tucson, AZ 85710

ATTACHMENT 1
Page 4 of 4